

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 3/12/10. Claims 1-21 are pending. Claim 21 has been withdrawn from consideration.

### ***Election/Restrictions***

2. Newly submitted claim 21 was directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Since applicant received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, claim 21 was withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement in the response filed 3/26/09, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

The rejection of claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, is hereby withdrawn due to the response filed 3/12/10. The Examiner

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understands claims 1-20 as being drawn to a computer storage medium/memory storing computer executable instructions. (See page 7 of applications 3/12/010 response).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kameda et al (US 5,923,018--hereinafter Kameda) in view of White et al (US 2004/0019501 A1)

[claim 1] Kameda discloses an examination scheduling program, stored in computer memory and having computer executable instructions for causing a computer to create a schedule for each patient, said program causing said computer to perform:

- function for fetching information on contents of the examination for each patient and an order of examination for each patient; and (col. 10, lines 40-60; col. 17, lines 54-col. 18, line 31)
- a function for fetching a waiting time from the medication to the examination set according to a type of examination; (Figure 2; col. 10, lines 1-49; Figure 7; col. 17, lines 54-col. 18, line 31—time increments between medication and testing/process are displayed)

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- a function for generating (i.e. displaying) an examination schedule of patients (Figures 4-5; col. 4, lines 45-56)

Kameda discloses the program as described above, but does not expressly disclose a function for creating an examination schedule based upon contents of the examination for each patient and an order of examination for each patient, and waiting time.

White discloses a system and application for generating/creating an examination schedule and patient queues and tracking based upon retrieved patient data, patient order, and waiting time required for given procedures (Figs. 2B, 7B, 8B, 9A-B; par. 38-41, 44-45, 49, 54-55). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to combine the system of Kameda of with the teaching of White to create an examination schedule based on information on contents of the examination, an order of examination and the waiting time. As suggested by White, one would have been motivated to include this feature to permit the staff members to define the steps in the medical testing process, to track the flow of patients from step to step in the medical testing process, to record the completion of steps as to individual patients, and to organize priorities for staff members carrying out each step. (par. 29)

Also, it should be noted that the recitation of "to avoid overlapping in time between timing of the medication and examination for each patient" is intended use. A recitation of the intended use of the claimed invention must result in a structural

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is noted that the claim has been amended to recite “a single nuclear medical examination.” However, the recitation of “a single nuclear medical examination” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

[claim 2] Kameda discloses an examination scheduling program as defined in claim 1, wherein said schedule for each patient is expressed by a pattern having a time span according to the type of examination, said pattern presenting the timing of the medication, the waiting time and the contents of the examination. (Figure 8; col. 18, lines 9-31)

[claim 3] Kameda discloses the examination scheduling program as defined in claim 1, wherein said schedule for each patient is displayed in form of a pattern on a time chart, with a line representing present time displayed to move on the time chart with progress of time. (Figures 5-7)

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[claim 4] Kameda discloses the examination scheduling program as defined in claim 2, wherein said schedule for each patient is displayed in form of a pattern on a time chart, with a line representing present time displayed to move on the time chart with progress of time. (Figures 4, 9)

[claim 5] Kameda discloses the examination scheduling program as defined in claim 1, wherein said schedule is altered by moving said pattern on said time chart with a pointing device.

[claims 6-8] Kameda discloses the examination scheduling program as defined in claim 2, wherein said schedule is altered by moving said pattern on said time chart with a pointing device. (col. 12, lines 56-59—various input devices include a mouse, i.e. a point device)

[claims 9-16] Kameda discloses an examination scheduling program, wherein said schedule for each patient is under control, and a correlation is made between actual measurements including actual medication and examination times, and data collected by said medical examination apparatus. (Figure 5, 6, 9; col. 17, lines 1-48; col. 18, lines 32-66)

[claims 17-20] Kameda discloses the examination scheduling program as defined in 1, further comprising a step of inputting an actual medication time, a step of comparing a scheduled medication time and said actual medication time, and a step of creating an examination schedule all over again when said step of comparing shows a disagreement. (Figure 5; col. 17, lines 1-29: result flag shows if medical action has or has not been performed.)

***Response to Arguments***

6. Applicant's arguments filed 3/12/10 have been fully considered but they are not persuasive.

(A) Applicant argues that Kameda does not meet the claim limitations because an operator performs the recited functions in the Kameda reference.

In response, the Examiner respectfully disagrees with applicant's interpretation of the Kameda reference. The system and method of Kameda is computer-implemented, and applicant has claimed a computer program for retrieving data, and scheduling. To the extent that an operator may be perform some steps in Kameda, the data retrieval and scheduling are performed using a computer, and therefore require a computer program.

As best understood by the Examiner, the applicant currently claims an application/software program. However, the current claim language describing functions of the software program do not preclude the description of a graphical user interface or an operator performing the functions at a computer using the software program (i.e. retrieving/fetching waiting time using the GUI, radio buttons or pull-down menu provided by a software application and using this information to create the schedule).

It is noted that the claim language recites and the applicant argues on page 9 of the 3/12/10 response the program is for "**causing** a computer to create a schedule for each patient." The use of a software program on a computer (by an operator) causes a

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computer to generate a schedule. Moreover, Kameda and White in combination were provided to address the limitations of claim 1.

As such, the prior art addresses the features of claim 1 as recited and the rejection is proper.

(B) Applicant argues that the prior art does not disclose “to avoid overlapping in time between timing of the medication and the examination for each patient and timing of medication and examination for other patients...”

As explained in the art rejection above, the recitation of “to avoid overlapping in time between timing of the medication and examination for each patient” is intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant argues that this limitation is used is directed to a distinct feature of the program present in the invention which requires processing and comparing of the Data by the computer and thus is not intended use.

However, Applicant’s arguments underscore that fact that this phrase is, in fact, intended use. Rather than positively reciting the actual steps, or computer instructions of comparing and processing required by the computer to generate a schedule without conflicts, the current claim language recites the intent of the schedule generation/creation (to avoid overlapping....)

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(C ) Applicant argues that White does not disclose “a function for creating an examination schedule to avoid overlapping in time between timing of the medication and the examination for each patient..., based on said information on contents of the examination and an order of examination and the waiting time...” In particular, the Applicant argues that White fails to meet the limitations because a user performs certain steps.

in response, the current claim language describing functions of the software program do not preclude the description of a graphical user interface or an operator performing the functions at a computer using the software program (i.e. retrieving/fetching waiting time using the GUI, radio buttons or pull-down menu provided by a software application and using this information to create the schedule). It is noted that the claim language recites and the applicant argues on page 9 of the 3/12/10 response the program is for “**causing** a computer to create a schedule for each patient.” The use of a software program on a computer (by an operator) causes a computer to generate a schedule.

Kameda discloses a function for generating (i.e. displaying) an examination schedule of patients (Figures 4-5; col. 4, lines 45-56) , but does not expressly disclose a function for creating an examination schedule based upon contents of the examination for each patient and an order of examination for each patient, and waiting time.

White discloses a system and application for generating/creating an examination schedule and patient queues and tracking based upon retrieved patient data, patient order, and waiting time required for given procedures (Figs. 2B, 7B, 8B, 9A-B; par. 38-



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41, 44-45, 49, 54-55). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to combine the system of Kameda of with the teaching of White to create an examination schedule based on information on contents of the examination, an order of examination and the waiting time, for the reasons provided in the rejection of claim 1.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RACHEL L. PORTER** whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 10-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L. P./  
Examiner, Art Unit 3626

/C. Luke Gilligan/  
Primary Examiner, Art Unit 3626